

Suspending a Physician without a Hearing

Hospitals are entitled to suspend a physician without a hearing when there is reasonable concern that patient safety is at risk.

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Dr. George Shaw had been practicing as an interventional radiologist at Midwest Hospital for 20 years. As an interventional radiologist, he performed an increasing range of procedures, and, after many years of successful practice, he had a period during which an unusual number of patients experienced complications. Many of the complications were not unexpected, given the nature of the procedures performed, but Dr. Shaw's colleagues noted this streak of adverse outcomes. Since none of the complications or adverse outcomes was clearly the result of incompetence or negligence, no action was taken.

Then one of Dr. Shaw's patients died during a neurological procedure performed for a cerebral aneurysm, a potentially fatal condition. The hospital administration was notified of the death and also learned about the other complications suffered by Dr. Shaw's patients. The Clinical Executive Committee (CEC), composed of department chairs and senior physicians in each department, met to review Dr. Shaw's cases. After preliminary review, the members of the CEC voted to suspend Dr. Shaw's privileges and hold a hearing to determine whether to terminate them. The CEC has the power to hold hearings and recommend termination of privileges; its recommendations are then voted on by the medical staff. The medical staff almost invariably follows the recommendation of the CEC, and thus a recommendation of termination by the CEC is effectively a termination of privileges.

Dr. Shaw later left Midwest to practice at another hospital. He subsequently sued Midwest for damages to his practice and his reputation resulting from the suspension of his privileges. Dr. Shaw alleged that the CEC and Midwest had a legal obligation to hold a hearing before suspending his privileges, and since the hearing resulted in his reinstatement, he argued that a presuspension hearing would have ultimately prevented any suspension. During his suspension, Dr. Shaw was unable to practice and therefore lost income. The suspension also created suspicion among referring colleagues. Dr. Shaw claimed that his reputation was permanently damaged, and he was forced to seek another practice environment.

Legal Analysis

Courts have held that physicians have a legally protected property right in their privileges to practice at government-owned facilities. Hospitals control the quality and number of physicians who are permitted to practice within the facilities by offering these medical staff privileges [1]. Medical staff bylaws set the standards of conduct for hospital staff and also offer procedures for granting and revoking hospital privileges [2].

Under the Fourteenth Amendment to the United States Constitution, property rights like hospital privileges cannot be removed without "due process." Due process generally includes the right to a hearing, the right to present evidence, and the right to have the decision made fairly and without prejudice prior to the deprivation of a protected property interest. Absent some extraordinary situation where a valid state or medical interest is at stake, the physician should be given notice of the allegations and a hearing should be held prior to the termination or suspension of medical staff privileges [3]. The physician has a right to receive notice of the time and place of a hearing and to receive a written explanation of the reasons for his or her suspension. The physician also has the right to call and cross-examine

witnesses and present evidence to rebut the allegations. The hearing committee must be free from any conflict of interest, and no member of the committee should be in direct economic competition with the physician involved.

The facts of the above case are adapted from *Patel v Midland Memorial Hospital & Medical Center* [hereinafter *Patel*] [4]. Dr. Patel sued the hospital and doctors collectively, alleging that they violated his constitutional rights by denying him presuspension due process and that they also defamed his character. The hospital countered that they had no choice but to act quickly to protect patient safety, and, since a presuspension process was not practical, the doctor's due process rights were not violated. The hospital further argued that, although Dr. Patel later produced evidence to rebut the reports on which the hospital based the suspension, the hospital's initial decision to suspend Dr. Patel's privileges was reasonable. The United States District Court for the Western District of Texas [hereinafter District Court] agreed with the hospital and its physicians, granting it summary judgment and dismissing the case.

Dr. Patel appealed the District Court's ruling, and the defendant hospital cross-appealed, arguing that under the Health Care Quality Improvement Act of 1986 (HCQIA) it was immune from all of Dr. Patel's claims and was entitled to reasonable attorneys' fees. The central issue before the US Court of Appeals for the Fifth Circuit [hereinafter Court of Appeals] was whether the District Court erred in granting summary judgment in favor of the hospital and its doctors on Dr. Patel's procedural due process claim: whether he was entitled to receive notice and an opportunity to be heard on the allegations against him before his clinical privileges were suspended.

In its analysis of whether Dr. Patel's due process rights were violated, the District Court considered not whether the physician *was actually* a danger but whether the medical facility had *reasonable grounds* for suspending him. The court recognized that hospitals have a responsibility to protect patient safety and that where physicians' privileges endanger patients, hospitals must err on the side of protecting patients. Thus, the court asked whether, given the circumstances and information available, the hospital was reasonable in suspending Dr. Patel's hospital privileges without a prior hearing.

Evidence from Midland Memorial Hospital & Medical Center [hereinafter Midland] showed that Dr. Patel's cases had resulted in "an inordinate number of catastrophic outcomes." Reviews at the hospital's bi-monthly cardiology morbidity/mortality meeting and by outside reviewers concurred that his cases presented a "high concentration of severe complications." Based on this evidence, the Court of Appeals upheld the District Court's ruling in favor of Midland and its doctors.

Dr. Patel argued that due process required that he receive notice and an opportunity to be heard on the allegations against him before his clinical privileges were suspended. He alleged that Midland and its doctors had deprived him of that process prior to his suspension, and he was entitled to relief. The court found that Dr. Patel's suspension was a deprivation and agreed that he deserved the protection of due process [5]. The District Court, however, reasoned that "procedural due process [was] a flexible concept whose contours are shaped by the nature of the individual's and the state's interests in a particular deprivation" [6-7]. Furthermore, the court reasoned that in some cases, "where a state must act quickly, or where it would be impractical to provide predeprivation process," postdeprivation process is sufficient to satisfy the requirements of due process [8].

Dr. Patel contended that he was not actually dangerous at the time of his suspension and that even if the District Court found that he was a danger at the time of his suspension, a precedent case, *Caine v Hardy*, required more presuspension process than Patel was granted. Specifically, he noted that the physician in *Caine* had prior notice of the investigation against him and that he was able to attend 2 informal meetings relating to the charges prior to his suspension [9]. The court disagreed with Dr. Patel's reading of *Caine*. Because, under the particular circumstances of the case, prompt action was necessary to secure patient safety, the Court of Appeals concluded that Dr. Patel had received all the presuspension process he was constitutionally due, and the District Court had properly granted summary judgment to the defendants on that issue.

Finally, Dr. Patel alleged that Midland had defamed him by disseminating "false and defamatory per se publications to third parties." In dismissing this allegation, the Court of Appeals held that since the Midland's Medical Executive Committee had reasonable grounds to conclude that Dr. Patel was a danger, his subsequent suspension was therefore proper, and the summary judgment was proper on this claim [10].

Midland cross-appealed, claiming immunity from prosecution under the Health Care Quality Improvement Act (HCQIA) and asking for payment of reasonable attorneys' fees. One purpose of the HCQIA is to ensure oversight of incompetent medical practitioners by protecting hospitals from litigation when they reasonably deny or suspend physician staff privileges. As such, the HCQIA provides immunity to any person who participates in a professional review action when the proceeding meets certain statutory requirements, and it allows the hospital's costs, including reasonable attorneys' fees to be paid by the plaintiff, "if the claim, or the claimant's conduct during the litigation of the claim, was frivolous, unreasonable, without foundation, or in bad faith."

In *Patel*, the Court of Appeals avoided deciding the issue of Midland Memorial Hospital's immunity under the HCQIA and remanded the case to the District Court for consideration of the issue of payment of attorneys' fees.

The court's decision in *Patel*'s suit established that suspension of physician privileges without a presuspension hearing when patient safety is at risk is not held to be a violation of due process.

Questions for Discussion

1. Does the hospital owe physicians any duty to protect their reputations while it carries out a detailed investigation as to whether the physician poses a danger to patients?
2. Can you think of a means by which the hospital might be able to protect both its patients and the physician's reputation until after the investigation?
3. Do you agree with the court's decision? Does the hospital owe any form of compensation to Dr. Shaw/Patel?

References

1. McCall SL. A hospital's liability for denying, suspending and granting staff privileges. *Baylor L Rev.* 1980;175:32.
[Google Scholar](#)
2. Joint Commission on Accreditation of Healthcare Organizations. Standard MS 2166. *Accreditation Manual for Hospitals.* 1994:66-72.
3. *Northeast Georgia Radiological Associates, PC v Tidwell, et al.*, 607 F 2d 507 at 511.
4. *Patel v Midland Memorial Hospital*, 298 F3d 333; 2002 US App LEXIS 13834.
5. *Gilbert v Homar*, 520 US 924, 138 L Ed 2d 120, 117 S Ct 1807 (1997).
6. *Gilbert*, 929
7. *Caine v Hardy*, 943 F2d 1406, 1412 (5th Cir 1991) (en banc).
8. *Gilbert*, 930.
9. *Caine*, 1407-08.
10. Tex Civ Prac & Rem Code Ann sec 73 005 (Vernon 2001).

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