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Equity - Private Associations - Court Will Order Admission of Qualified Physician to County Medical Society

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EQUITY—PRIVATE ASSOCIATIONS—COURT WILL ORDER ADMISSION OF QUALIFIED PHYSICIAN TO COUNTY MEDICAL SOCIETY.

Falcone v. Middlesex County Medical Soc'y (N.J. 1961).

Plaintiff brought an action in lieu of mandamus to compel defendant medical society to admit him to membership. The trial court found that plaintiff had received a full medical education and had been awarded the degree of Doctor of Osteopathy by the Philadelphia College of Osteopathy, an institution not approved as a medical school by the American Medical Association. After passing the requisite examination, he had been licensed to practice medicine and surgery in New Jersey by the State Board of Medical Examiners.[1] Subsequently, on the basis of his prior training and of seven months attendance, he received the degree of Doctor of Medicine and Surgery from the College of Medicine of the University of Milan, a medical school recognized by the American Medical Association. Plaintiff had served a medical internship and a brief surgical residency and consistently practiced medicine and surgery rather than osteopathy. Although he fulfilled all the formal requirements for membership in defendant society, plaintiff's application for admission was refused on the basis of an unwritten membership requirement of four years of study at a medical school approved by the American Medical Association. As a result of this refusal, plaintiff was dropped from the staffs of two hospitals which required their staff physicians to be members of the defendant society, and was effectively precluded from access to the facilities of other local hospitals, all of which had a similar requirement. It consequently became impossible for plaintiff to practice his profession. On the basis of these facts, the trial court directed that plaintiff be admitted to full membership in the defendant society.[2] The New Jersey Supreme Court affirmed, *holding* that public policy requires the courts to strike down unreasonable and arbitrary exclusions from private associations when such associations effectively control access to the practice of a profession or vocation. *Falcone v. Middlesex County Medical Soc'y*, 170 A. 2d 791 (N.J. 1961).

Cases involving judicial interference with the membership policies of unincorporated, non-profit organizations are of two types, those involving exclusion of potential members and those involving expulsion of individuals who had been members. The earlier English cases in this field were of the expulsion type. In deciding these cases, Chancery required that the ex-member show that he was being deprived of some

1. N.J. STAT. ANN. §§ 45:9-5.1, 45:9-15 (1957).
2. Falcone v. Middlesex County Medical Soc'y, 62 N.J. Super. 184, 162 A. 2d 324 (1960).

property interest before it would enjoin the expulsion.[3] In later decisions, injunctive relief was granted on a contract theory,[4] and some commentators have suggested that a tort theory[5] might also be employed by an expelled member as the basis for his re-instatement action. Aside from using these traditional theories, courts have on occasion set aside the expulsion as being unreasonable, contrary to natural justice, or violative of public policy.[6] In *Bernstein v. Alameda-Contra Costa Medical Ass'n*,[7] plaintiff was expelled from defendant medical association because he had acted in violation of a by-law of that association which provided for the expulsion of any member who gave testimony in court disparaging another member. In deciding that the expulsion was unreasonable and ordering plaintiff's re-instatement, the court noted that a private association's by-law which is found to be against public policy is unenforceable and furnishes no basis for an expulsion. A somewhat similar position was taken much earlier by the Pennsylvania Supreme Court[8] when it affirmed a lower court's order reinstating a union member who had been expelled for political activities in violation of a by-law of the union which was determined by the court to be against public policy and hence void. A transition can be seen therefore in these expulsion cases, wherein the courts have moved from judicial interference based on traditional theories to interference based on the requirements of public policy.

Unlike the expulsion cases, the cases involving exclusion from membership are much less numerous and do not have any foundation in traditional theories of property, contract, or tort (although it is at least arguable that an interference with advantageous business relationships could be found in some of these cases). However, in both cases the essential evil involved is the economic harm which the individual may suffer as a result of non-membership. In the exclusion cases there has been a notable reluctance on the part of the courts to act, and this reluctance has evidently been due to the fact that none of the conventional theories would justify such action.[9] Nevertheless, in particular situations,

3. Baird v. Wells, 44 Ch. D. 661 (1890); Wolfe v. Matthews, 21 Ch. D. 194 (1882); Rigby v. Connol, 14 Ch. D. 482 (1880). The property interest required in these cases was some interest in the physical assets of the organization.

4. Krause v. Sander, 66 Misc. Rep. 601, 122 N.Y. Supp. 54 (Sup. Ct. 1910); Lawson v. Hewel, 118 Cal. 613, 50 Pac. 763 (1897). The theory was that the individual's entry into membership gave rise to a contract, and an expulsion without good cause was a breach which the courts would enjoin.

5. Chafee, *The Internal Affairs of Associations Not For Profit*, 43 HARV. L. REV. 993, 1007 (1930). The tort theory suggested is an action to prevent interference with an advantageous relationship. As yet, however, no court has acted on this suggestion.

6. Joseph v. Passaic Hospital Ass'n, 26 N.J. 557, 141 A. 2d 18 (1958); Cox, *The Role of Law In Preserving Union Democracy*, 72 HARV. L. REV. 609, 613 (1959).

7. 139 Cal. App. 2d 241, 293 P. 2d 862 (1956).

8. Spayd v. Lodge 665, Bhd. of Railroad Trainmen, 270 Pa. 67, 113 Atl. 70 (1921).

9. Gold Knob Outdoor Advertising Co. v. Outdoor Advertising Ass'n of Texas, Inc., 225 S.W. 2d 645 (Tex. Civ. App. 1949); State *ex rel.* Baumhoff v. Taxpayer's League of St. Louis County, 87 S.W. 2d 207 (Mo. Ct. App. 1935); Ross

where considerations of policy and justice were sufficiently compelling, judicial ingenuity has not been lacking.[10] In deciding these cases, a distinction has been drawn between organizations of an economic nature, in which membership is required before a particular career can be pursued, and those of a purely social or fraternal nature.[11] Courts applying this distinction will act only in cases involving exclusion from an organization of the former type, since exclusion from a social or fraternal organization will usually result only in hurt feelings, while exclusion from an economic one can result in loss of livelihood.[12] Although comparatively rare, there are cases involving unions[13] and medical societies[14] in which the economic nature of the society was recognized and an unreasonable exclusion therefrom enjoined by the court. Such a case was *Group Health Co-operative v. King County Medical Soc'y*,[15] in which plaintiffs, who otherwise qualified for membership in a medical society, were excluded therefrom on the ground that they practiced contract medicine in a pre-paid medical co-operative. In ordering the society to admit plaintiffs, the court held that the exclusion was unreasonable, arbitrary, and in violation of the policy announced in the anti-monopoly provisions of the State's constitution. A somewhat similar position was taken in *Wilson v. Newspaper Union*.[16] In that case, plaintiffs were denied membership in a union which had a closed shop agreement with the company, the union simply stating it was closed to new members because many union members were unemployed. The court, in ordering plaintiffs admitted, suggested that when a union has a virtual monopoly over the practice of a trade in an area, it is under a public duty not to exercise its power in an unreasonable or arbitrary manner but to protect the individual's right to earn a livelihood. Medical societies, although in theory purely private groups, stand in a similar position in that a denial of membership is for all practical purposes an effective revocation of license to practice[17] and courts have recognized this in ordering medical societies to admit otherwise qualified individuals who were arbitrarily excluded.[18]

v. Ebert, 275 Wis. 523, 82 N.W. 2d 315 (1957); Chafee, *The Internal Affairs of Associations Not For Profit*, 43 HARV. L. REV. 993, 1027 (1930).

10. Cameron v. International Alliance of Theatrical Stage Employees, 118 N.J. Eq. 11, 176 Atl. 692 (1935); James v. Marinship Corp., 25 Cal. 2d 721, 155 P. 2d. 329 (1944).

11. Trautwein v. Horbourt, 40 N.J. Super. 247, 123 A. 2d 30 (App. Div. 1956).

12. Chafee, *The Internal Affairs of Associations Not For Profit*, 43 HARV. L. REV. 993, 1022 (1930).

13. James v. Marinship Corp., 25 Cal. 2d 721, 155 P. 2d 329 (1944); Williams v. Int'l Bhd. of Boilermakers, 27 Cal. 2d 586, 165 P. 2d 903 (1946).

14. Group Health Co-operative v. King County Medical Society, 39 Wash. 2d 586. 237 P. 2d 737 (1951); People *ex rel.* Bartlett v. Medical Society, 32 N.Y. 187 (Ct. App. 1865).

15. 39 Wash. 2d 586, 237 P. 2d 737 (1951).

16. 123 N.J. Eq. 347, 197 Atl. 720 (1938).

17. Note, *The American Medical Association: Power, Purpose, and Politics in Organized Medicine*, 63 YALE L.J. 938, 953 (1954).

18. See note 14 *supra*.

From the foregoing, it will be apparent that the New Jersey Supreme Court has not acted as radically as it might at first appear. The cases reveal that the courts in practice have found means to enjoin arbitrary and unreasonable exclusions from private associations when such exclusions resulted in serious economic harm to the excluded party. The fact findings of the trial court clearly place the instant case in that category. The great value of the present decision is that it articulates the public policy considerations which have been the basis of many prior decisions, but which have rarely been so explicitly recognized.[19] Public policy, as the court recognizes, demands both that the right of the individual to practice his profession be protected and that society not be denied the services of qualified physicians. Applying this principle, the court has realistically recognized that a "private" medical association may be in fact a "quasi-public"[20] licensing body, completely controlling access to the practice of medicine in a given area. An organization exercising such coercive economic power can hardly be said to be genuinely "voluntary" in nature. Further, the element of close personal associations within the organization, which made the courts understandably reluctant to intervene in the affairs of purely social and fraternal groups, is almost wholly lacking in the case of such economic organizations. The court's choice then was between leaving such an organization free to inflict grave economic harm on individuals at will, or imposing a degree of judicial control. It wisely chose the latter course. It would seem that this is clearly not an unreasonable interference in the affairs of a private association as long as two essential conditions are satisfied: (1) that the association monopolizes the practice of a particular trade or profession, and (2) that the exclusion complained of is genuinely arbitrary and unreasonable. The latter condition raises interesting possibilities of future litigation, particularly in view of the continuing hostility of the organized medical profession to osteopathy.[21] How arbitrary must an exclusion be to justify judicial intervention? It is interesting to speculate whether a New Jersey court would now enjoin the exclusion from a medical society of one licensed to practice medicine but holding only a degree of Doctor of Osteopathy. In this regard, the scope of the present decision is by no means clear, and future litigation will undoubtedly be required to explore its implications.

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19. That considerations of social policy play a vital formative role in the evolution of law is hardly a novel proposition. See HOLMES, THE COMMON LAW 35 (1881). This has been widely recognized by the courts. *E.g.*, Henningsen v. Bloomfield Motors, Inc., 32 N.J. 358, 161 A. 2d 69 (1960); Smith v. Brennan, 31 N.J. 353, 157 A. 2d 497 (1960).

20. Falcone v. Middlesex County Medical Soc'y, 170 A. 2d 791, 797 (1961), quoting James v. Marinship Corp., 25 Cal. 2d 721, 155 P. 2d 329, 335 (1944).

21. Note, *The American Medical Association: Power, Purpose, and Politics in Organized Medicine*, 63 YALE L.J. 938, 966-967 (1954).