

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

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AUG - 5 1987

H. STUART CUNNINGHAM
UNITED STATES DISTRICT COURT

DR. JOHN DOE,
Plaintiff,

v.

COUNTY OF COOK, ILLINOIS;
BOARD OF COMMISSIONERS OF
COOK COUNTY, ILLINOIS; and
AGNES D. LATTIMER, M.D.,
Individually and as
Medical Director of Cook
County Hospital,

Defendants.

No.

97 6888

JUDGE NORDBERG

MAGISTRATE LEFKOW

COMPLAINT

INTRODUCTION

1. This is an action for declaratory and injunctive relief and damages brought pursuant to 42 U.S.C. Sections 1983 and 1988, 28 U.S.C. Section 2201 et seq., 29 U.S.C Section 794 and the Fourteenth Amendment to the United States Constitution. Plaintiff seeks redress due to defendants' arbitrary and unlawful discrimination on the basis of a physical handicap, Acquired Immune Deficiency Syndrome ("AIDS"). Plaintiff, who has AIDS, is an attending physician employed at Cook County Hospital ("the hospital"). Defendants summarily barred plaintiff from the hospital for a two-day period in February, 1987, and at the time of the filing of this Complaint have restricted his clinical privileges effectively to prevent him from providing direct care to patients. Defendants have ignored the overwhelming consensus of medical and scientific evidence that plaintiff is fully able

to assume all of his professional responsibilities and that he poses no significant risk of harm or threat to the safety of his patients.

Plaintiff alleges that defendants' conduct constitutes discrimination on the basis of handicap in violation of the Fourteenth Amendment to the United States Constitution and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. Section 794.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action under 28 U.S.C. Sections 1331 and 1343. Pursuant to 28 U.S.C. Section 1391, venue is proper in this Court because all of the parties are located in the Northern District of Illinois and the acts described took place within the Northern District of Illinois.

PARTIES

3. Plaintiff Dr. John Doe is a licensed physician who has served as an attending physician at the hospital since 1976. Dr. Doe has filed this action under a pseudonym and has omitted certain individually identifying information about his duties at the hospital in order to protect his privacy and, because of any irrational fear which defendants' unlawful actions may have created, to ensure that his patients are unimpeded in their access to his services.

4. Defendant County of Cook, Illinois is a unit of local government as defined by Article VII, Section 1 of the

Constitution of the State of Illinois.

5. Defendant Board of Commissioners of Cook County ("the Board") is the governing body of defendant County of Cook under Ill. Rev. Stat. ch. 34, Sections 302, 402, 403 and 909. The Board establishes the rules, policies and practices of Cook County. Pursuant to Ill. Rev. Stat. ch. 34, Sections 303 and 5022 and the corporate bylaws of the hospital, the Board has ultimate responsibility for the management, control and operation of the hospital.

6. Defendant Agnes Lattimer, M.D., is the Medical Director of the hospital. Pursuant to the hospital's bylaws, Dr. Lattimer is appointed by the Board to review and manage the medical affairs of the hospital. Defendant Lattimer has the authority summarily to suspend the clinical privileges of a member of the medical staff pursuant to the hospital's bylaws. Defendant Lattimer is sued in her individual and official capacities.

STATEMENT OF THE CASE

7. As an attending physician at the hospital, Dr. Doe's clinical privileges and non-clinical duties include, but are not limited to, providing direct patient care, serving as a supervising attending physician who assists in the training of medical students and residents, and supervising one of the hospital's laboratories. Dr. Doe is a highly competent medical specialist who is deeply committed to public medicine and the service of indigent patients. He has no private practice and professionally dedicates himself solely to his work at the

hospital.

8. AIDS is a condition which seriously impairs the body's immune system and which, to date, is considered fatal. AIDS is an actual and perceived physical handicap within the meaning of 29 U.S.C. Section 794.

9. Dr. Doe was diagnosed as having AIDS in the fall of 1986. At all times subsequent he has performed his employment duties in a professionally competent, satisfactory and safe manner. Dr. Doe is physically and mentally fit to perform all of his employment duties. In performing those duties, he poses no significant risk of harm or threat to the safety of his patients. Dr. Doe is "otherwise qualified" to assume the full range of his clinical privileges and non-clinical duties at the hospital, within the meaning of 29 U.S.C. Section 794.

10. In January, 1987, defendant Lattimer asked the chairman of Dr. Doe's division at the hospital to remove Dr. Doe from all direct patient care activities because he had AIDS. The chairman refused to alter Dr. Doe's duties and privileges, and informed defendant Lattimer that Dr. Doe was fully capable of continuing to exercise all of his clinical privileges and perform all of his non-clinical duties. Defendant Lattimer then requested Dr. Doe to relinquish all of his direct patient care privileges at the hospital. When Dr. Doe refused this request, defendant Lattimer indicated that unless he voluntarily complied with her request, she would order him to comply.

11. On February 2, 1987, the Board considered the issue of

Dr. Doe's employment at the request of defendant Lattimer. Defendant Lattimer requested that the Board restrict only Dr. Doe's physical contact with patients and permit him to continue to perform his duties not involving direct patient care. The Board, however, ruled that all of Dr. Doe's clinical privileges and non-clinical duties should be summarily suspended, which meant that Dr. Doe could no longer work at the hospital.

12. The Board did not have the authority under the hospital's bylaws summarily to suspend Dr. Doe. Defendant Lattimer did have that authority. On February 2, 1987, subsequent to the meeting of the Board, defendant Lattimer summarily suspended all of Dr. Doe's clinical privileges and non-clinical duties. She also ordered Dr. Doe to leave the hospital immediately.

13. On February 3, 1987, the Peer Review Committee met to consider Dr. Doe's case, as required by the hospital's bylaws. The Peer Review Committee, composed entirely of physicians, including two physicians specializing in infectious disease, unanimously voted to recommend reinstatement of Dr. Doe's clinical privileges.

14. On February 4, 1987, the Executive Medical Staff of the hospital met to consider Dr. Doe's case, as required by the hospital's bylaws. The Executive Medical Staff, including 32 physicians and one non-physician authorized to vote, unanimously adopted the Peer Review Committee's recommendation to restore Dr. Doe's clinical privileges.

15. Pursuant to the hospital's bylaws, Dr. Doe's full privileges were restored immediately upon the vote of the Executive Medical Staff. Dr. Doe returned to work on February 5, 1987, and assumed the full range of his professional activities at the hospital.

16. On February 5, 1987, the Joint Conference Committee of the hospital met pursuant to the hospital's bylaws. The Joint Conference Committee voted to endorse the decision of the Executive Medical Staff to permit Dr. Doe to maintain all of his clinical privileges.

17. On February 9, 1987, pursuant to the hospital's bylaws, the Board again convened to consider Dr. Doe's case. The Board, at the urging of defendant Lattimer, voted to prohibit Dr. Doe from providing any direct patient care.

18. By letter dated February 9, 1987, defendant Lattimer identified the specific tasks which Dr. Doe would not be permitted to perform. The limitations imposed by defendant Lattimer barred Dr. Doe from direct patient care.

19. Pursuant to the hospital's bylaws, Dr. Doe requested a hearing before the Board. In accordance with the hospital's bylaws, Dr. Doe retained all of his clinical privileges until the Board made a final decision after the hearing.

20. On May 19-22, 1987, a hearing committee appointed by the President of the Board convened. The committee's function pursuant to the hospital's bylaws was solely to determine if Dr. Doe proved by "clear and convincing evidence" that the

defendants' proposed actions "lack[ed] a factual basis" or were "arbitrary, capricious and unreasonable."

21. On June 16, 1987, the hearing committee recommended that Dr. Doe be permitted to provide direct patient care but that such care be limited to procedures involving only "non-invasive" contact with patients and that Dr. Lattimer be given discretion to determine which procedures are "invasive."

22. With respect to "non-invasive" procedures, which the Board also had sought to restrict, the hearing committee found the Board's earlier decision to limit such contact "unreasonable." The committee also found that "a restriction of clinical privileges which do not involve a risk of transmission of AIDS from [infected health care workers] to patients of Cook County Hospital would be contrary to all known medical authorities and would promote anxiety in the community and a perception that AIDS could be transmitted from casual contact, and would be counterproductive of educational efforts relative to the cause and prevention of AIDS."

23. On July 6, 1987, the Board substantially adopted the hearing committee's recommendations, prohibited Dr. Doe from performing "invasive procedures" and delegated to defendant Lattimer the responsibility of defining "invasive."

24. Defendant Lattimer, on July 7, 1987, barred Dr. Doe from the procedures which she defined as invasive. These restrictions went into effect immediately. Several of these procedures have not been performed for many years by physicians,

including plaintiff, in his division of the hospital. Dr. Doe has no intention of performing these procedures in the future and has so advised the defendants.

25. On July 28, 1987, the Joint Conference Committee met pursuant to the hospital's bylaws to review the Board's decision. The Joint Conference Committee rejected a motion to adopt the Board's decision on a five-to-five vote, with all physicians on the Committee other than defendant Lattimer voting against the motion.

26. On August 3, 1987, pursuant to the hospital's bylaws, the Board made its final decision and voted to reaffirm its July 6 decision.

27. Dr. Doe has attempted to treat his patients while adhering to the restrictions imposed by defendants. The restrictions, however, effectively prevent him from providing direct care to his patients. As a result, at the time of filing this Complaint Dr. Doe is no longer treating patients.

28. The hospital receives substantial federal funds, including Medicaid and Medicare payments. The medical treatment for many of the patients under Dr. Doe's care is financed in large part by this federal financial assistance.

29. The defendants' decisions summarily to suspend Dr. Doe's clinical privileges and non-clinical duties, and subsequently to restrict Dr. Doe's privileges in the manner described in this Complaint, were irrational and based solely on vague, undifferentiated fears which are unsupported by medical or

scientific evidence.

30. Defendants have engaged in the conduct, conditions or acts described in this Complaint solely on the grounds that plaintiff has AIDS.

31. Defendants directly participated or acquiesced in or authorized the conduct, conditions and acts described in this Complaint. Defendants acted knowingly and intentionally. Defendants acted willfully, wantonly and with reckless and callous indifference to plaintiff's rights. The Board is the highest level decision-maker with authority over the hospital, and in taking the actions described in this Complaint the Board has determined the official policy of the County of Cook with respect to Dr. Doe's employment and other health care employees who have AIDS or are infected with the virus which causes AIDS.

32. The defendants acted under color of state law at all times relevant to this Complaint.

33. The conduct of defendants described above proximately and directly caused and will continue to cause irreparable injury to Dr. Doe's emotional and mental well-being. His work is vital to the quality of his life, and he is suffering from a fatal condition and therefore has limited time to practice his chosen profession. Plaintiff has no adequate remedy at law for these injuries.

CLAIMS FOR RELIEF

34. Defendants have unlawfully discriminated against

plaintiff solely on the basis of his handicap in violation of Section 504 of the Rehabilitation Act, 29 U.S.C. Section 794.

35. Defendants have violated plaintiff's right to equal protection of the laws under the Fourteenth Amendment to the United States Constitution.

WHEREFORE, plaintiff requests that this Court:

A. Issue a declaratory judgment that the policies, practices and acts described in this Complaint violate the Rehabilitation Act and the Fourteenth Amendment to the United States Constitution;

B. Grant preliminary, and thereafter permanent, injunctive relief requiring defendants to permit plaintiff to maintain all of the duties and privileges of his position; C. Award plaintiff compensatory damages in the amount of \$500,000.00 [FIVE HUNDRED THOUSAND DOLLARS] against the defendants, jointly and severally.

D. Award plaintiff punitive damages in the amount of \$500,000.00 [FIVE HUNDRED THOUSAND DOLLARS] against defendant Lattimer.

E. Award plaintiff his costs, expenses and reasonable attorneys' fees pursuant to 29 U.S.C. Section 794a and 42 U.S.C. Section 1988;

F. Grant any additional relief which the Court deems just and proper.

Dr. John Doe

BY:



One of his Attorneys

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