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## **Due Process, Court of Appeals: Daxor Corporation v. New York State Department of Health**

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purpose would be served by undoing the adoption order and disrupting the child's new family ties because of a technical flaw in the surrender allocation."<sup>86</sup>

There are constitutional issues implicit in this case involving the fundamental liberty interest of the parent-child relationship. The termination of parental rights is an extreme threat to one's liberty representing the most significant of state intrusions.<sup>87</sup> Indeed, "[a]ny procedure that affects those parental rights must guarantee due process."<sup>88</sup> This case never reaches the stage of challenging the constitutionality of New York's adoption statutes. Rather, it illustrates the procedures that the law in New York has employed to assure the protections of due process in the adoption arena.

Daxor Corporation v.  
New York State Department of Health<sup>89</sup>  
(decided June 5, 1997)

Appellant, New York State Department of Health [hereinafter "State"], terminated the respondent, Daxor Corporation's [hereinafter "Daxor"], provisional licenses to operate certain medical facilities.<sup>90</sup> Daxor commenced the instant action, asserting that the termination was "biased, arbitrary and capricious,"<sup>91</sup> and that due process, guaranteed by both the Federal<sup>92</sup> and New York State<sup>93</sup> Constitutions, had been violated

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<sup>86</sup> *Id.* (Titone, J., concurring).

<sup>87</sup> *See In re Sarah K.*, 66 N.Y.2d 223, 239 n.6, 487 N.E.2d 241, 249 n.6, 496 N.Y.S.2d 384, 392 n.6 (1985).

<sup>88</sup> *Id.*

<sup>89</sup> 90 N.Y.2d 89, 681 N.E.2d 356, 659 N.Y.S.2d 189 (1997).

<sup>90</sup> *Id.* at 95, 681 N.E.2d at 359, 659 N.Y.S.2d at 192.

<sup>91</sup> *Id.*

<sup>92</sup> U.S. CONST. amend. XIV, § 1 This section provides in pertinent part: "No State shall . . . deprive to any person of life, liberty, or property, without due process of law." *Id.*

<sup>93</sup> N.Y. CONST. art. I, § 6. This section provides in pertinent part: "No person shall be deprived of life, liberty or property without due process of law." *Id.*

by the State's failure to provide it with a hearing.<sup>94</sup> The Appellate Division, First Department, held that the licenses that had previously been granted to Daxor by the City of New York [hereinafter "City"] were a "protected property interest" and that the State had no right to deny the licenses without a hearing.<sup>95</sup>

The New York State Court of Appeals, reversing the order of the Appellate Division, First Department, held that Daxor's provisional licenses were not protected interests and, therefore, Daxor was not entitled to a hearing before the licenses were terminated.<sup>96</sup>

Daxor Corporation is the owner and operator of a blood bank, semen bank and clinical laboratories in New York City.<sup>97</sup> Licensing of Daxor's semen banks was first required by the State in 1991.<sup>98</sup> Daxor's semen bank, in existence since 1971, operated under a provisional license that was granted by the State in 1991.<sup>99</sup> Daxor's blood bank and clinical laboratory were licensed and regulated by the New York City Department of Health until 1994, when an amendment to Public Health Law § 574<sup>100</sup> gave the State exclusive control of licensing for all such facilities state-wide.<sup>101</sup>

The State notified Daxor that in order to continue to operate they would have to apply for state licenses.<sup>102</sup> In the interim, they

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<sup>94</sup> *Daxor*, 90 N.Y.2d at 95, 681 N.E.2d at 359, 659 N.Y.S.2d at 192.

<sup>95</sup> *Id.*

<sup>96</sup> *Id.* at 99-100, 681 N.E.2d at 361-62, 659 N.Y.S.2d at 194-95.

<sup>97</sup> *Id.* at 93, 681 N.E.2d at 358, 659 N.Y.S.2d at 191.

<sup>98</sup> *Id.* at 94, 681 N.E.2d at 358, 659 N.Y.S.2d at 191.

<sup>99</sup> *Id.*

<sup>100</sup> N.Y. PUB. HEALTH LAW § 574 (McKinney 1990). This Statute provides in pertinent part:

No person shall own or operate a clinical laboratory located in or accepting specimens from New York state or own or operate a blood bank which collects, processes, stores and/or distributes, human blood, blood derivatives or blood components, in New York state unless a valid permit has been issued . . . .

*Id.*

<sup>101</sup> *Daxor*, 90 N.Y.2d at 94, 681 N.E.2d at 358, 659 N.Y.S.2d at 191.

<sup>102</sup> *Id.*

were permitted to continue operating in accordance with their city licenses pending resolution of their state license applications.<sup>103</sup> In 1994, the State sent Daxor a letter proposing to deny all of its applications and to terminate its provisional licenses due to numerous violations of the law.<sup>104</sup> Daxor asked the State to reconsider the denial alleging that many of the violations either no longer existed or were minimal and of a technical nature.<sup>105</sup> However, after review, the applications were denied and the provisional licenses were terminated.<sup>106</sup> Daxor claimed that when the State took over the City's job, it was "'grandfathered' into [S]tate licenses" and thus the State's denial of its licenses amounted to a revocation which by law requires a hearing.<sup>107</sup>

The New York State Court of Appeals began its analysis by looking at the legislative intent behind the 1994 amendment to Public Health Law § 574, which transferred the authority to regulate medical facilities from the City to the State.<sup>108</sup> The court found that the explicit language of the amendment and the legislative intent behind its passage<sup>109</sup> did not automatically grant state licenses to Daxor.<sup>110</sup> Relying on *In re Richard I, Inc. v. Ambach*,<sup>111</sup> the court stated that, although existing licenses require

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<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

<sup>105</sup> *Id.* at 95, 681 N.E.2d at 359, 659 N.Y.S.2d at 192.

<sup>106</sup> *Id.*

<sup>107</sup> *Id.* at 96, 681 N.E.2d at 359, 659 N.Y.S.2d at 192.

<sup>108</sup> *Id.*

<sup>109</sup> See Mem. of Leg. Rep. of City of New York, Bill Jacket, reprinted in 1993 N.Y. Laws 27-28 (McKinney 1993). See also Mem. of Senator Michael J. Tully, Jr., reprinted in 1993 N.Y. Legis. Ann. 315-16.

<sup>110</sup> *Daxor*, 90 N.Y.2d at 96-97, 681 N.E.2d at 359-60, 659 N.Y.S.2d at 192-93.

<sup>111</sup> 90 A.D.2d 127, 457 N.Y.S.2d 583 (3d Dep't 1982). In *Richard*, the court found, in rejecting the petitioner beauty schools' application for a license from the State, that the application was a renewal application not the suspension or revocation of an existing license. *Id.* at 130, 457 N.Y.S.2d at 585. The court stated that "[u]nder such circumstances, a hearing [was] not required." *Id.*

a hearing to be revoked, there was no analogous right for initial applications or renewals.<sup>112</sup>

Daxor then claimed that its right to a hearing was based on a property interest “derived from years of continuous operation under the City’s licensing scheme and provisional State licenses.”<sup>113</sup> In *Board of Regents v. Roth*,<sup>114</sup> the United States Supreme Court found that an untenured professor did not have a property interest sufficient to mandate that University authorities afford him a hearing when they decided not to renew his employment contract.<sup>115</sup> In discussing the professor’s due process claim, the Supreme Court noted that the Fourteenth Amendment safeguards interests in benefits that a person has already acquired and that these property interests have certain attributes.<sup>116</sup> The Court stated in order to have a property interest, a person “must have more than an abstract need or desire for it” but instead must “have a legitimate claim of entitlement to it.”<sup>117</sup> Therefore, the Supreme Court stated that the Federal Constitution does not create property interests, rather, they are defined by “an independent source such as state law.”<sup>118</sup>

The *Daxor* court stated that, in order to decide if a right has been created by state law, “the focus is on the relevant statute, regulation, or contract establishing eligibility for the benefit at issue.”<sup>119</sup> The constitutionality of a state law that withheld Medicaid reimbursement claims was challenged by the petitioner clinical laboratories in *Medicon Diagnostic Labs v. Perales*,<sup>120</sup> as being violative of due process.<sup>121</sup> The New York State Court of

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<sup>112</sup> *Id.* at 130, 457 N.Y.S.2d at 585.

<sup>113</sup> *Daxor*, 90 N.Y.2d at 98, 681 N.E.2d at 360, 659 N.Y.S.2d at 193.

<sup>114</sup> 408 U.S. 564 (1972).

<sup>115</sup> *Id.* at 578.

<sup>116</sup> *Id.* at 576-77.

<sup>117</sup> *Id.* at 577.

<sup>118</sup> *Id.*

<sup>119</sup> *Daxor Corp. v. N.Y.S. Dep’t of Health*, 90 N.Y.2d 89, 98-99, 681 N.E.2d 356, 360-61, 659 N.Y.S.2d 189, 193-94 (1997) (quoting *Medicon Diagnostic Labs. v. Perales*, 74 N.Y.2d 539, 549 N.E.2d 124, 127, 549 N.Y.S.2d 933, 936 (1989)).

<sup>120</sup> *Medicon*, 74 N.Y.2d at 549 N.E.2d 124, at 549 N.Y.S.2d at 936.

<sup>121</sup> *Id.* at 541-42, 549 N.E.2d at 125, 549 N.Y.S.2d at 934.

Appeals, when making a determination of whether due process had been violated, looked at three distinct factors that constituted the balancing test set forth by the Supreme Court in *Mathews v. Eldridge*.<sup>122</sup> It found that due process was satisfied because there were procedures in effect that, in effect, protected the private interests of the petitioners while safeguarding the government's interest in the integrity of the Medicaid program.<sup>123</sup> Therefore, the *Daxor* court looked to Daxor's alleged property interest in light of the state laws from which it was derived.<sup>124</sup>

Property interests have not been found in benefits that are contingent upon subjective factors because satisfaction of those factors is wholly discretionary.<sup>125</sup> In *Doe*,<sup>126</sup> a prison inmate was denied participation in a prison program that provided for conjugal visits with his spouse after it was found that he had contracted AIDS.<sup>127</sup> Defendant and his spouse claimed that the State had violated their constitutional rights to due process because in establishing the program, the State had created a legitimate expectation of conjugal visits and that such expectation is a constitutional interest protected by due process.<sup>128</sup> The New York State Court of Appeals held that since participation in the program was based on fifteen subjective factors, the review

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<sup>122</sup> *Id.* at 546, 549 N.E.2d at 128, 549 N.Y.S.2d at 937 (citing *Mathews v. Eldridge*, 424 U.S. 319 (1976)). The *Mathews* balance test is as follows:

First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probative value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

*Id.* at 321.

<sup>123</sup> *Medicon*, 74 N.Y.2d at 546-47, 549 N.E.2d at 127, 549 N.Y.S.2d at 937.

<sup>124</sup> *Daxor*, 90 N.Y.2d at 98, 681 N.E.2d at 361, 659 N.Y.S.2d at 194.

<sup>125</sup> *Doe v. Coughlin*, 71 N.Y.2d 48, 518 N.E.2d 536, 523 N.Y.S.2d 782 (1987).

<sup>126</sup> *Id.* at 55, 518 N.E.2d at 541, 523 N.Y.S.2d at 787.

<sup>127</sup> *Id.* at 51, 518 N.E.2d at 538, 523 N.Y.S.2d at 784.

<sup>128</sup> *Id.* at 54, 518 N.E.2d at 540, 523 N.Y.S.2d at 786.

system was highly discretionary.<sup>129</sup> Therefore, the couple did not have an expectation that could be protected by due process.<sup>130</sup>

In contrast, under a Federal Constitutional analysis, the United States Court of Appeals for the Second Circuit found that the town's denial of certificates of occupancy to a builder, based solely on the fact that certain roads in the development had not been accepted by the town, was a violation of due process.<sup>131</sup> The *Sullivan* court, in an opinion written by Judge George C. Pratt, noted that it is difficult to determine whether a license applicant has presented a legitimate claim of entitlement under state law or merely a one-sided expectation of some sort of benefit.<sup>132</sup> The legitimacy of the claim "should depend on whether, absent the alleged denial of due process, there is either a certainty or a very strong likelihood that the application would have been granted."<sup>133</sup> The "theoretical possibility of discretionary action" does not make every license application a "mere 'unilateral hope or expectation'" that would not create a protected property interest.<sup>134</sup>

The *Daxor* court found that the law gave the State broad discretion in licensing medical facilities.<sup>135</sup> In order to decide whether to issue licenses to facilities, the State had to consider

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<sup>129</sup> *Id.* at 55-56, 518 N.E.2d at 541, 523 N.Y.S.2d at 787.

<sup>130</sup> *Id.* In addition, the dissent contended that the couple's rights had been violated because a prisoner regulation is only valid when it is "reasonably related to legitimate penological interests." *Id.* at 68, 518 N.E.2d at 549, 523 N.Y.S.2d at 795 (Alexander, J., dissenting) (quoting *Turner v. Safley*, 482 U.S. 78, 89 (1987)). In *Doe*, the court found that the prison had no "legitimate penological purpose" for preventing the conjugal visits. *Id.* at 75, 518 N.E.2d at 554, 523 N.Y.S.2d at 800.

<sup>131</sup> *Sullivan v. Town of Salem*, 805 F.2d 81, 85 (2d Cir. 1986) (holding that the denial of a builder's application for certain housing licenses would constitute a due process violation if the houses met the town's requirements since there could be no element of discretion in the town's denial).

<sup>132</sup> *Id.* at 84-85.

<sup>133</sup> *Id.* at 85 (quoting *Yale Auto Parts, Inc. v. Johnson*, 593 F. Supp. 329, 332 (D. Conn. 1984)).

<sup>134</sup> *Id.*

<sup>135</sup> *Daxor Corp. v. N.Y.S. Dep't of Health*, 90 N.Y.2d 89, 99, 681 N.E.2d 356, 361, 659 N.Y.S.2d 189, 194 (1997).

factors such as whether the facility was “competently staffed and properly equipped” and “operated in the manner” required by the Public Health Laws and whether the people who ran the facility “possess[ed] the character, competence, training, and ability” to administer the facility, clearly discretionary factors.<sup>135</sup> Because Daxor’s provisional licenses could be revoked at any time and thus did not give rise to a property interest, Daxor was not entitled to a due process hearing.<sup>137</sup>

It is clear from the previous cases that the federal and state law governing the protection of property rights under due process are coterminous. Both federal and New York State courts look at whether the party claiming the property right has a legitimate claim of entitlement to it under the law or contract that established the right<sup>138</sup> and then decide whether the law grants discretion to the authority granting the right.<sup>139</sup> Finally, both the state and federal courts apply a balancing test<sup>140</sup> in order to see how much discretion defeats the entitlement.<sup>141</sup>

People v. Thompson<sup>142</sup>  
(decided October 23, 1997)

Defendant appealed his conviction,<sup>143</sup> claiming his right to due process under the New York State Constitution<sup>144</sup> was violated

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<sup>136</sup> *Id.* (quoting N.Y. PUB. HEALTH LAW § 575 (2), § 573 (2) (McKinney 1990)).

<sup>137</sup> *Id.* at 99-100, 681 N.E.2d at 361, 659 N.Y.S.2d at 194.

<sup>138</sup> *Id.* at 98, 681 N.E.2d at 361, 659 N.Y.S.2d at 193 (citing Board of Regents v. Roth, 408 U.S. 564, 577 (1972)).

<sup>139</sup> *Id.* at 98-99, 681 N.E.2d at 361, 659 N.Y.S.2d at 194 (citing RRI Realty Corp. v. Inc. Village of Southampton, 870 F.2d 911, 918 (2d Cir. 1989)).

<sup>140</sup> See Mathews v. Eldridge, 424 U.S. 319, 321 (1976).

<sup>141</sup> Sullivan v. Town of Salem, 805 F.2d 81, 85 (2d Cir. 1986); Daxor, 90 N.Y.2d at 99, 681 N.E.2d at 361, 659 N.Y.S.2d at 194.

<sup>142</sup> 90 N.Y.2d 615, 687 N.E.2d 1304, 665 N.Y.S.2d 21 (1997).

<sup>143</sup> *Id.* at 618, 687 N.E.2d at 1304, 665 N.Y.S.2d at 23. Defendant was convicted of kidnapping in the first degree, five counts of rape in the first degree, four counts of sodomy in the first degree, assault in the second degree, and robbery in the third degree. *Id.*