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Due Process, Supreme Court New York County: Ramanadhan v. Wing

due to the death of many of the investigators, thereby limiting his cross examination at trial.[377] The court agreed that Batiz may have endured some prejudice caused by the delay, but since the delay was abundantly due to his own actions, a "general unspecified claim of prejudice" does not provide a basis to dismiss the indictment.[378]

In comparing the federal case and state cases relied on by the *Batiz* court, the application of the law in a preindictment delay are congruous. Both federal and state cases conclude that although some prejudice exists against the defendant due to the lapse of time in prosecuting a case, such delay may not deprive the defendant of due process.

Ramanadhan v. Wing[379]
(decided August 12, 1997)

This Article 78 proceeding involves a due process challenge under both the Federal[380] and the New York State[381] Constitutions, where a professional's reputation and livelihood were deprived by State action taken prior to the availability of a hearing.[382]

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[377] *Id.*

[378] *Id.* (citing People v. Andine, 214 A.D.2d 373, 624 N.Y.S.2d 594 (1st Dep't 1995)). In *Andine*, defendant appealed his conviction for assault, contending that the preindictment delay of four years and seven months deprived him of due process. *Id.* at 373, 624 N.Y.S.2d at 595. The court dismissed the indictment since the People failed to show that diligent efforts were made to locate the defendant. *Id.* at 374-75, 624 N.Y.S.2d at 596. They were in possession of the defendant's photograph, they knew his aliases and his whereabouts, and, nonetheless, closed the case after six weeks. *Id.*

[379] 174 Misc. 2d 11, 662 N.Y.S.2d 393 (Sup. Ct. New York County 1997).

[380] U.S. CONST. amend. XIV. The Fourteenth Amendment provides in pertinent part: "[N]or shall any state deprive any person of life, liberty, or property without due process of law. . . ." *Id.*

[381] N.Y. CONST. art. I, § 6. This provision of the New York State Constitution provides in pertinent part: "[N]o person shall be deprived of life, liberty, or property without due process of law." *Id.*

[382] *Ramanadhan*, 174 Misc. 2d at 24, 662 N.Y.S.2d at 404. Here, a Special Administrative Hearing before the New York State Department of Social

Specifically, the potential due process violation arose when a physician, whose practice consisted solely of Medicaid patients, was excluded from Medicaid, thus threatening grave professional consequences.[383] The exclusion was particularly debilitating because it went into effect before the physician could be granted a timely and continuous hearing.[384] The physician an Article 78 proceeding to challenge the State's prehearing determination. The New York County Supreme Court upheld due process safeguards to protect reputational injury brought about by State regulations which impose prehearing suspensions.[385] The court recognized that "the due process clause was designed to prevent exactly this sort of injustice."[386]

Petitioner, a pediatrician who practiced in an area of upper Manhattan where there is a shortage of physicians, provided medical services in a clinic[387] where one hundred percent of the patient population was insured by Medicaid.[388] Her claim began on November 9th of 1995, when she received a Notice of Proposed Agency Action from the New York State Department of Social Services [hereinafter "Department"].[389] The Notice alleged that she had committed "unacceptable practices" pursuant to section 515.2 of title 18 of the New York Code of Rules and Regulations,[390] including submission of claims for treatment and

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Services would afford the professional an opportunity to be heard. *Id.* at 13, 662 N.Y.S.2d at 397.

[383] *Id.*

[384] *Id.*

[385] *Id.* at 24, 662 N.Y.S.2d at 404. Due process guards against "the loss of [one's] profession, [one's] practice and . . . reputation for a lengthy and indefinite period of time without the opportunity for a hearing." *Id.*

[386] *Id.*

[387] *Id.* at 12, 662 N.Y.S.2d at 397. Petitioner's husband ran a pharmacy directly across the street from the clinic. *Id.*

[388] *Id.*

[389] *Id.*

[390] N.Y. COMP. CODES R. & REGS. tit. 18, § 515.2 (1995). This statute provides in pertinent part: "An *unacceptable practice*" is fraudulent conduct, including filing false claims for unnecessary medical treatment, and "[f]ailing to maintain or to make available for purposes of audit or investigation records necessary to fully disclose the medical necessity . . . ." *Id.*

prescriptions that were "false, not medically necessary, and not supported by adequate records documenting their necessity."[391] At that time, the petitioner was informed that she could deny the charges in writing, which she did on December 20, 1995.[392]

The Department ultimately issued its "determination" on November 26, 1996, which terminated the physician's contract with Medicaid for three years, effective December 25, 1996.[393] As was her right, petitioner requested a Special Administrative Hearing in a letter dated December 5, 1996.[394] As a result of this request, petitioner was given a March 6, 1997 hearing date.[395] However, eight months after petitioner's initial exclusion from Medicaid, the parties had only met for one day of testimony.[396] In an earlier ruling, the New York Supreme Court had issued a temporary restraining order that delayed exclusion of the petitioner from Medicaid until determination of this proceeding.[397] However, on January 21, 1997, despite the temporary restraining order, the Department published petitioner's name on a list of providers barred from Medicaid.[398]

All States, pursuant to provisions of their respective State Medicaid Assistance programs, are mandated by the federal government to disclose any negative action taken against a health care practitioner.[399] When the action to exclude a doctor is

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[391] *Ramanadhan,* 174 Misc. 2d at 13, 662 N.Y.S.2d at 397.

[392] *Id.*

[393] *Id.*

[394] *Id.*

[395] *Id.*

[396] *Id.* This delay was the result of three adjournments over the course of the proceeding. *Id.*

[397] *Id.* This stay of exclusion allowed petitioner the opportunity to continue in her professional capacity while agreeing to these adjournments. *Id.*

[398] *Id.* Her name was later taken off the list at an unspecified date. *Id.*

[399] 42 U.S.C. § 1396r-2 (a)(1) (1992). This statute provides in pertinent part:

> The State must have in effect a system of reporting . . . by any authority of the State . . . responsible for the licensing of health care practitioners (or any peer review organization or private accreditation entity reviewing the services provided

commenced by Medicaid, it must notify "other State agencies, the State medical licensing board, the public, [and] beneficiaries."[400] When a doctor is barred from participation in Medicaid, facts and circumstances of the exclusion must be reported to the state or local authorities that are responsible for doctor licensing and certification.[401] It is also appropriate to report to any present employer of the physician, as well as to a host of contingent health services agencies and health care providers that might necessarily deal with the physician, such as HMO's and professional organizations.[402]

Exclusion from Medicaid seriously impairs a physician's professional privileges outside the Medicaid realm as well. Federal regulations provide that a physician may be suspended from a federal health care program when it can be shown that the

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> by health care practitioners) . . . [a]ny adverse action taken by such licensing authority.

Id. Such disclosure is to be made to "the State licensing authority, any peer review organizations, any private accreditation entity, and to the agencies administering Federal health care programs." *Ramanadhan*, 174 Misc. 2d at 14, 662 N.Y.S.2d at 397.

[400] *See* 42 C.F.R. § 1002.212 (1996). This statute provides in pertinent part: "When the State agency initiates an exclusion under § 1002.210, it must . . . notify other State agencies, the State medical licensing board (where applicable), the public, beneficiaries, and others . . . ." *Id.* Medicaid must also notify those entities entitled to notice of exclusion from federally funded medical assistance under 42 C.F.R. § 1001.2005 (a) which provides in pertinent part: "HHS will promptly notify the appropriate State(s) or local agencies or authorities having responsibility for the licensing or certification of an individual or entity excluded (or directed to be excluded) from participation of the facts and circumstances of the exclusion." *Id.* Notice of exclusion must also be given under 42 C.F.R. § 1001.2006 (a) which states in pertinent part:

> HHS will give notice of the exclusion and the effective date to the public, to beneficiaries . . . and, as appropriate, to (1) any entity in which the excluded individual or entity is known to be serving as an employed . . . (4) Hospitals, skilled nursing facilities, home health agencies and health maintenance organizations; (5) Medical societies and other professional organizations . . . .

Id.

[401] 42 C.F.R. § 1001.2005 (a).

[402] 42 C.F.R. § 1001.2006 (a)..

individual was "otherwise sanctioned under . . . a State health care program, for reasons bearing on the individual's or entity's professional competence, professional performance or financial integrity."[403] Here, petitioner provided evidence that other providers would discontinue professional privileges upon Medicaid's exclusion.[404] Indeed, MetLife Empire Plan automatically terminates its contracts with those physicians who have been banned by Medicaid.[405] Furthermore, pursuant to New York law, a hospital cannot be reimbursed by Medicaid for services or prescriptions provided by a doctor who has been excluded from its provisions.[406]

Federal law requires reporting by hospitals that have taken steps against doctors resulting in an interruption of that doctor's clinical privileges for more than thirty days.[407] The United States Code requires reporting to the State Board of Medical Examiners, and to the U.S. Secretary of Health and Human Services.[408] The

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[403] *See* 42 C.F.R. § 1001.601 (1996). This statute provides in pertinent part: "The OIG may exclude an individual or entity suspended or excluded from participation . . . under . . . (ii) A State health care program, for reasons bearing on the individual's or entity's professional competence, professional performance or financial integrity." *Id.*

[404] Ramanadhan v. Wing, 174 Misc. 2d 11, 14, 662 N.Y.S.2d 393, 398 (Sup. Ct. New York County 1997).

[405] *Id.*

[406] N.Y. COMP. CODES R. & REGS. tit. 18, § 515.5 (a) (1995). This statute provides in pertinent part:

> No payments will be made to or on behalf of any person for the medical care, services or supplies furnished by or under the supervision of the person during a period of exclusion or in violation of any condition of participation in the program. In the case of a hospital, nursing home or home health care provider, the department may continue payments for up to 30 days after the date of exclusion for clients admitted prior to the exclusion or whose plan of care was implemented prior to the exclusion.

Id.

[407] *Ramanadhan*, 174 Misc. 2d at 15, 662 N.Y.S.2d at 398.

[408] *See* 42 U.S.C. § 11133 (a)(1) (1995). This statute provides in pertinent part: "Each health care entity which . . . takes a professional review action that adversely affects the clinical privileges of a physician for a period longer than 30 days . . . shall report to the Board of Medical Examiners . . . ." *Id.*

information must be provided at least monthly, where it is stored and made accessible in a data bank that hospitals *must* check whenever a doctor applies for a staff position or for admitting privileges.[409] The data bank must also be checked every two years for any information pertaining to current staff members and doctors with admitting privileges.[410] Under the Code,[411] a presumption exists that imputes knowledge of any reported information, regardless of whether the hospital actually obtains it.[412]

Once an administrative determination to exclude a physician from Medicaid has become final, with no further appeal pending, a finding of professional misconduct becomes conclusive.[413] At this point, the Office of Professional Misconduct affixes a penalty after a hearing based solely on the issue of the penalty to be imposed.[414] In the present case, the Department set forth in its answer a principle of administrative law under section 7801(1) of

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See 42 U.S.C. § 11133 (b) (1995). This statue provides in pertinent part: "Each Board of Medical Examiners shall report [to the Secretary] the information reported to it under subsection (a) . . . ." *Id.*

[409] *Ramanadhan*, 174 Misc. 2d at 15, 662 N.Y.S.2d at 398.

[410] *Id.*

[411] *See* 42 U.S.C. §11135(b) (1995). This statute provides in pertinent part: "with respect to a medical malpractice action, a hospital which does not request information respecting a physician . . . is presumed to have knowledge of any information reported under this subchapter. . . ." *Id.*

[412] *Ramanadhan,* 174 Misc. 2d at 15, 662 N.Y.S.2d at 398.

[413] N.Y. EDUC. LAW § 6530 (9)(c) (McKinney 1985). This statute provides in pertinent part: "[T]he following is professional misconduct . . . [h]aving been found guilty in an adjudicatory proceeding of violating a state or federal statute or regulation, pursuant to a final decision or determination, and when no appeal is pending . . . ." *Id.*

[414] N.Y. PUB. HEALTH LAW § 230 (10)(p) (McKinney 1997). This statute provides in pertinent part:

> In cases of professional misconduct based solely upon a violation of subdivision nine of section sixty-five hundred thirty of the education law, the director may direct that charges be prepared and served and may refer the matter to a committee on professional conduct for its review and report of findings, conclusions as to guilt, and determination.

Id. In the present case, a fine of $102,000 was affixed. *Ramanadhan*, 174 Misc. 2d at 12, 662 N.Y.S.2d at 397.

the New York Civil Practice Law and Rules,[415] pursuant to which a petitioner may only seek an Article 78 judicial proceeding upon exhaustion of all other administrative remedies. However, the court emphasized that the present action involves a constitutional challenge to which the rule does not pertain.[416] Therefore, the Article 78 proceeding was appropriately filed.[417]

Petitioner's claim was based on the circumstances surrounding her long-anticipated hearing: (1) non-continuous proceedings; (2) protracted hearing schedules due to the Department's backlog; and (3) post-hearing decisions rendered months after conclusion of the hearing.[418] These allegations were generally denied by the Department, but were not rebutted by further evidence. Accordingly, they must be deemed admitted.[419]

The statutory regulations that govern Medicaid provider hearings are silent on the issue of length of time allowable between Determination notice and hearing date.[420] The following is required by statute: (1) a request for a hearing must formally be made within sixty days of the issuance of the final Determination;[421] (2) written notice of the hearing date must be made fifteen days prior;[422] and (3) a post-hearing decision must be

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[415] N.Y. C.P.L.R. 7801 (McKinney 1994). This statute provides in pertinent part: "Except where otherwise provided by law, a proceeding under this article shall not be used to challenge a determination . . . which is not final or can be adequately reviewed by appeal . . . ." *Id.*

[416] *Ramanadhan*, 174 Misc. 2d at 15, 662 N.Y.S.2d at 399.

[417] *Id.*

[418] *Id.* at 16, 662. N.Y.S.2d at 399.

[419] *Id.*

[420] N.Y. COMP. CODES R. & REGS. tit. 18, § 519.1 (1995).

[421] N.Y. COMP. CODES R. & REGS. tit. 18, § 519.1 provides in pertinent part: "Any clear, written communication to the department by or on behalf of a person requesting review of a department's final determination is a request for a hearing if made within 60 days of the date of the department's written determination." *Id.*

[422] N.Y. COMP. CODES R. & REGS. tit. 18, § 519.10 provides in pertinent part:

> At least 15 calendar days prior to the date of the hearing, written notice must be sent to the parties and their representatives. The notice must inform them of: (a) the date, time and place of the hearing and the parties' right to

handed down within one hundred and twenty days.[423] As is evident, there is no time limit imposed for a requested hearing to take place.[424] Furthermore, "there is no requirement for the hearing to be conducted in a reasonably continuous manner."[425] The United States Supreme Court employed a balancing test in *Barry v. Barchi*,[426] to conclude that important public interests outweigh an individual's private liberty interest in the issuance of a pre-hearing suspension.[427] In *Barry*, a New York statute required suspension of a horse trainer's license where post-race testing of the horse uncovered evidence of drugs in the horse's system.[428] The Court noted that the State has ample interest in preserving the integrity of a gaming sport carried on under its

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> request an adjournment or change of venue; (b) the manner and means by which adjournments or changes of venue may be requested and granted; (c) the issues which are to be the subject of the hearing; (d) the manner in which the hearing will be conducted; and (e) the right of each party to be represented himself/herself, to testify, to produce witnesses, to present documentary evidence and to examine opposing witnesses.

Id.

[423] N.Y. COMP. CODES R. & REGS. tit. 18, § 519.22. This statute provides in pertinent part:

> (a) A written hearing decision will be made by the commissioner or by a person designated to act on behalf of the commissioner and must be based exclusively on the record and testimony introduced at the hearing. (b) The decision will be issued as promptly as possible, but in any event within 120 days of the conclusion of the hearing or the closing of the record.

Id.

[424] *Ramanadhan* 174 Misc. 2d at 16, 662 N.Y.S.2d at 399 (Sup. Ct. New York County 1997).

[425] *Id.*

[426] 443 U.S. 55, 66 (1979) (suspending a horse trainer's license while not assured of a prompt postsuspension hearing, was held unconstitutional under the Due Process Clause of the Fourteenth Amendment given the trainer's substantial interest in a speedy resolution of the controversy and the state's minimal interest in delaying such a determination).

[427] *Id.* at 64.

[428] *Id.* at 57-59.

auspices, and therefore allowed pre-hearing suspension despite a recognized liberty interest on the part of the trainer.[429] However, the Court went on to state that a hearing should be held "at a meaningful time and in a meaningful manner,"[430] and found that due process was not served where a prompt postsuspension hearing was not assured.[431] "Once suspension has been imposed, the trainer's interest in a speedy resolution of the controversy becomes paramount . . . . In these circumstances, it was necessary that Barchi be assured a prompt postsuspension hearing, one that would proceed and be concluded without appreciable delay."[432]

Similarly, the State of New York requires meaningful timing for post-hearing suspensions. In the case of *Pelaez v. Waterfront Commission of New York Harbor*,[433] petitioner, a twenty-year, nontenured employee of the Waterfront Commission of New York Harbor, was suspended without pay while awaiting determination of charges of illicit meetings with a labor leader who was under investigation by the Commission.[434] In *Pelaez*, the Appellate Division, Second Department, held that a three-month delay was violative of due process, and required that "such a payless suspension may continue for a reasonable period, or stated another way, so long as the trial or hearing on the charges is held within a reasonably prompt time."[435]

In the present case, the court went on to determine whether due process protection should be invoked, specifically where Medicaid regulations would permit four months delay in granting a decision both pre- and post-hearing.[436] The court stated that

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[429] *Id.* at 64.

[430] *Id.* at 66 (quoting Armstrong v. Manzo, 380 U.S. 545, 552 (1965)).

[431] *Id.*

[432] *Id.*

[433] 77 A.D.2d 947, 947-48, 431 N.Y.S.2d 134, 135 (2d Dep't 1980) (holding that a payless suspension of a twenty-year, nontenured employee requires a reasonably prompt trial or hearing on the charges).

[434] *Id.* at 947, 431 N.Y.S.2d at 135.

[435] *Id.* at 948, 431 N.Y.S.2d at 135.

[436] Ramanadhan v. Wing, 174 Misc. 2d at 17, 662 N.Y.S.2d at 399-400 (Sup. Ct. New York County 1997).

under such circumstances, due process would indeed be necessary to protect a valid liberty or property interest.[437] Accordingly, the court then proceeded to question whether such interests exist in this case.[438] While it has been shown that a Medicaid provider lacks a property interest in "continuing to participate in Medicaid,"[439] there is a liberty interest in freedom from stigmatizing allegations made by the State that preclude one's right to work.[440] In addition, where such damaging allegations affect one's "good name, reputation, honor, or integrity,"[441] the individual has a right to refute the charges and "clear one's name at a hearing."[442]

In *Wisconsin v. Constantineau*,[443] the United States Supreme Court struck down a Wisconsin statute that provided for "posting" of notices in liquor stores, absent a hearing.[444] These notices prohibited sale or gifts of liquor to one exhibiting "excessive drinking" behavior.[445] "[T]he label or characterization given a person by 'posting'. . . [is] such a stigma

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[437] *Id.*

[438] *Id.* at 17, 662 N.Y.S.2d at 400.

[439] *Id.* (citing Schaubman v. Blum, 49 N.Y.2d 375, 380, 402 N.E.2d 1133, 1135, 426 N.Y.S.2d 230, 233 (1980)).

[440] Traux v. Raich, 239 U.S. 33, 41 (1915) (holding that a statute which based the right to employment on citizenship status was found to violate equal protection under the Due Process Clause, affirming a personal liberty interest in one's right to work in the common occupations of everyday life absent intrusion by the State).

[441] Board of Regents of State Colleges v. Roth, 408 U.S. 564, 573 (1972) (holding that a dismissal of a nontenured teacher after one year of employment by the State does not violate due process rights so long as his good name and status in the community were not compromised, which otherwise would have required notice and an opportunity to be heard).

[442] *Ramanadhan*, 174 Misc. 2d at 17, 662 N.Y.S.2d at 400.

[443] 400 U.S. 433 (1971) The Court found the Wisconsin statute unconstitutional for allowing "posting" of a notice in retail liquor outlets forbidding sale or gift of liquor to one suspected of "excessive drinking." *Id.* at 434. Such "posting" violates procedural due process by affixing a stigmatizing label without benefit of notice and an opportunity to be heard. *Id.* at 436.

[444] *Id.* at 434.

[445] *Id.*

or badge of disgrace that procedural due process requires notice and an opportunity to be heard."[446]

This right to procedural due process was limited in the case of *Paul v. Davis*.[447] A flyer depicting Davis as an "Active Shoplifter" was distributed by the police chiefs to area merchants after his arrest on a shoplifting charge.[448] The charge was later dismissed and Davis brought suit claiming a due process violation stemming from "the infliction by state officials of a 'stigma' to [his] reputation . . . ."[449] The Court distinguished *Constantineau*[450] by showing that the liquor store "posting" in that case not only defamed the aggrieved respondent, but also altered her legal status by depriving her of a common right to purchase liquor.[451] This additional loss under state law was not present in the case, and thus due process issues could not be invoked.[452] "But the interest in reputation alone which respondent seeks to vindicate in this action in federal court is quite different from the "liberty" or "property" recognized in [other] decisions."[453]

Numerous cases since *Paul v. Davis* have expanded the "stigma plus" test which now requires a showing beyond mere reputational injury in order to suffice for a liberty or property interest.[454] In *Brandt v. Board of Cooperative Educational Services*,[455] a teacher who was discharged amidst claims of sexual

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[446] *Id.* at 436.

[447] 424 U.S. 693 (1976) (claiming that reputational injury alone as evidenced by publication of one's name and likeness on an 'Active Shoplifter' list does not rise to the level of liberty or property interests normally afforded procedural protection).

[448] *Id.* at 695.

[449] *Id.* at 701.

[450] *Constantineau*, 400 U.S. 433.

[451] *Paul*, 424 U.S. at 711.

[452] *Id.* at 711.

[453] *Id.*

[454] *See, e.g.*, Ramanadhan v. Wing, 174 Misc. 2d 11, 21, 662 N.Y.S.2d 393, 402 (Sup. Ct. New York County 1997).

[455] 820 F.2d 41 (2d Cir. 1987) (holding that charges of sexual misconduct lodged against a teacher resulting in his discharge does not alone amount to a deprivation of liberty; rather, a showing that such charges, recorded in his

misconduct, proved a "stigma plus" where his future job opportunities were threatened by virtue of "allegedly false and defamatory charges in his personnel file," which were then available to potential employers.[456]

Many New York cases have espoused the view in *dictum* that public dissemination of false allegations that stigmatize one's professional endeavors threatens a liberty interest, thus invoking due process protection.[457] However, in a case factually similar to *Ramanadhan*, the Second Circuit in *Senape v. Constantino*[458] held that a physician discharged from Medicaid failed to satisfy the "stigma plus" test.[459] Specifically, the federal court here felt that there was not a showing of a deprivation of a tangible interest above and beyond mere reputational injury brought about by exclusion from Medicaid.[460] "Plaintiff herein cannot point to any specific deprivation of his opportunity to seek employment with others caused by state action."[461]

In concluding its analysis, the court in *Ramanadhan* refused to follow the Second Circuit's holding in *Senape*.[462] The petitioner

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personnel file, would likely preclude future employment opportunities, is sufficiently stigmatizing to require notice and an opportunity to be heard).

[456] *Id.* at 42.

[457] Bezar v. N.Y.S. Dep't of Social Serv., 151 A.D.2d 44, 50, 546 N.Y.S.2d 195, 199 (3d Dep't 1989) (claiming that physicians, denied the opportunity by the Department of Social Services to re-enroll in state's Medicaid program, could not allege a right to a name-clearing hearing absent the essential prerequisite of public dissemination of stigmatizing allegations).

[458] No. 93 CIV 5182, 1995 WL 29502 (S.D.N.Y. 1995) (holding that a physician excluded and denied re-enrollment in Medicaid is precluded from claiming a liberty interest when he retains his license to practice medicine and is not specifically foreclosed by the State from future employment opportunities).

[459] *Id.* at *9.

[460] *Id.* Here, the physician retained his license to practice medicine and could continue to do so. *Id.* at *8.

[461] *Id.*

[462] Ramanadhan v. Wing, 174 Misc. 2d 11, 21, 662 N.Y.S.2d 383, 402 (Sup. Ct. New York County 1997) (citing Fields v. Board of Higher Education, 94 A.D.2d 202, 207, 463 N.Y.S.2d 785, 788 (1st Dep't 1983)). "A state court is not bound under the doctrine of stare decisis by the opinions of the federal courts." *Id.*

here may have retained her license to practice medicine, but her ability to continue to do so, especially in her established practice where all of her patients were only covered by Medicaid, was seriously impaired so long as she was excluded for misconduct.[463]

Here, Ramanadhan's interruption of clinical privileges will need to be reported to a national data bank. This is a public dissemination of negative information that threatens professional viability.[464] Furthermore, all potential employers have been deemed "appropriate" for reporting pursuant to New York law.[465] "It ignores reality to focus on the doctor's retention of a medical license, when, in fact, virtually all professional opportunities will be foreclosed and petitioner's clinics will be put out of business."[466]

What's more, the "data bank"[467] in *Ramanadhan* was found to be roughly equivalent to the "personnel file" in *Brandt*.[468] As in *Brandt*, the data bank may suffice as a "plus" for triggering due process protection.[469] Accordingly, under New York law, stigmatizing allegations that result in loss of employment or potential for future employment require a hearing.[470] Due process guarantees "fairness" of process, which in this case, demands a timely hearing "conducted in a reasonably continuous manner."[471]

On these facts, federal courts would not find a threatened liberty interest, as in *Senape*, where the physician retains his/her

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[463] *Id.* at 20, 662 N.Y.S.2d at 402.

[464] *Id.*

[465] *Id.*

[466] *Id.* at 21, 662 N.Y.S.2d at 402.

[467] *Id.*

[468] Brandt v. Bd. of Cooperative Educ. Serv., 820 F.2d 41, 42 (2d Cir. 1987).

[469] *Ramanadhan,* 174 Misc. 2d at 21, 662 N.Y.S.2d at 402.

[470] *See, e.g.,* Lee TT. v. Dowling, 87 N.Y.2d 699, 664 N.E.2d 1243, 642 N.Y.S.2d 181 (1996) (holding that dissemination of allegations of child abuse via a state-sponsored Central Register that seriously jeopardize future employment prospects must first be proved by a fair preponderance of the evidence). *See also* Pelaez v. Waterfront Comm'n of New York Harbor, 77 A.D.2d 947, 431 N.Y.S.2d 134 (2d Dep't 1980); Bezar v. New York State Dep't of Social Serv., 151 A.D.2d 44, 546 N.Y.S.2d 195 (3d Dep't 1989).

[471] *Ramanadhan,* 174 Misc. 2d at 24, 662 N.Y.S.2d at 404.

license and the data bank for dissemination of stigmatizing information is not specifically targeted at future employers.[472] In contrast, the Supreme Court, New York County, expressly refused to follow *Senape*, holding instead that the regulations providing for prehearing suspension of Medicaid providers were unconstitutional for lack of procedures to afford a timely and continuous hearing.[473] The dissemination of information, like the data bank in *Ramanadhan*, imperils one's reputation while threatening future professional opportunities, a "plus" that triggers a due process shield of protection.[474]

[472] *Id.* at 20, 662 N.Y.S.2d at 401.
[473] *Id.* at 20, 662 N.Y.S.2d at 402.
[474] *Id.* at 17, 662 N.Y.S.2d at 400.