

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

TOTAL CARE PHYSICIANS, P.A.,)	
)	
Plaintiff,)	
)	
V.)	C.A. NO. 99C-11-201-JRS
)	
KEVIN W. O’HARA, M.D.,)	
)	
Defendant.)	

ORDER REFUSING CERTIFICATION OF APPEAL
FROM INTERLOCUTORY ORDER

This 23rd day of July, 2003, Plaintiffs, Total Care Physicians, P.A., and Total Care Physicians of Glasgow, P.A., (collectively “TCP”), having filed an Application for Certification of Interlocutory Appeal of this Court’s decisions dated July 10, 2003, denying TCP’s motion for reargument and making certain pre-trial rulings with respect to damages (“the “Application”), it appears to the Court that:

(1) The standard for determining the appealability of an interlocutory order is well-settled: the Order must have determined a substantial issue and established a legal right.¹ Additionally, the interlocutory appeal must satisfy one of the five criteria

¹*Castaldo v. Pittsburgh-Des Moines Steel Co., Inc.*, 301 A.2d 87 (Del. 1973).

listed in Supreme Court Rule 42 (b).²

(2) In its July 10, 2003 letter opinion, at the parties' request, the Court addressed certain pre-trial issues relating to causation and damages to assist the parties in staging discovery and preparing for trial. Specifically, the Court determined that TCP would be required to establish a causal link between the improper solicitation of TCP patients by the defendant, Kevin W. O'Hara, M.D. ("Dr. O'Hara"), and TCP's damages. The Court indicated that a statistical sampling of the affected patients may satisfy TCP's burden of proof. The Court also determined that TCP had not proven willful or wanton conduct on the part of Dr. O'Hara and was not, therefore, entitled to punitive damages.³ Finally, in a separate order, the Court denied TCP's motion for reargument which sought reconsideration of the Court's prior ruling that Dr. O'Hara did not owe a fiduciary duty to TCP.⁴

(3) The legal principles which were the subject of the Court's rulings were not unprecedented or controversial. With respect to the causation and damages issue, the

²*Id.*

³*Total Care Physicians, P.A. v. O'Hara*, C.A. No. 99C-11-201, Slights, J. (Del. Super., July 10, 2003)(Letter Op.).

⁴*Total Care Physicians, P.A. v. O'Hara*, C.A. No. 99C-11-201, Slights, J. (Del. Super., July 10, 2003) (ORDER).

Court simply engaged in construction of clear and unambiguous statutory provisions.⁵

The process was not novel and the outcome of it was never really in doubt. The Court's punitive damages analysis involved the application of factual findings after a bench trial to clear statutory criteria.⁶ And the Court's decision on the motion for reargument involved a straight-forward application of the well-settled principle of law of the case. Accordingly, the Court concludes that TCP's Application does not satisfy the threshold criterion of Delaware Supreme Court Rule 42 (b).⁷ In light of this conclusion, the Court need not address the additional criteria set forth in the enumerated provisions of the rule.

(4) Finally, the Court notes that this matter has been pending in this Court for almost four years. The procedural history is complicated. There is, however, a "light at the end of the tunnel." The second phase of the bifurcated trial -- which has been scheduled and rescheduled now three times -- is set to go forward in May, 2004. There is much discovery to be done before the trial. The Court is concerned that an interlocutory appeal of workaday pretrial rulings based on well-settled legal principles

⁵See 6 Del. C. § 2001, *et. seq.* (The Uniform Trade Secrets Act).

⁶6 Del. C. § 2003 (b).

⁷See *Phizer, Inc. v. Advanced Monobloc, Corp.*, C.A. No. 97C-04-037, Quillen, J., (Del. Super., Sept. 24, 1999) (Letter Op. at 9) (refusing to certify interlocutory appeal in a case where the denial of summary judgment was based upon application of settled law to unique facts).

will do nothing but cause unnecessary further delay of the final disposition of this litigation.⁸

Based on the foregoing, TCP's application for certification of interlocutory appeal is **REFUSED**.

IT IS SO ORDERED.

Judge Joseph R. Slights, III

Original to Prothonotary

cc: Jeffrey S. Welch, Esquire
Charles M. Oberly, III, Esquire

⁸*See Phizer, Inc., supra* (court considered unnecessary delay of the litigation as a factor in the certification analysis).